California Fair Political Practices Commission

MEMORANDUM

To: Chairman Getman and Commissioners Downey, Knox, Scott and Swanson

From: Holly B. Armstrong, Commission Staff Counsel
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Re: Proposition 34 Regulations: Treatment of Outstanding Debt (§ 85316) -- Second Pre-notice Discussion of Proposed Regulation 18531.6

Date: June 26, 2001

Introduction

As a result of the changes to the Political Reform Act ("the Act") brought about by Proposition 34, as of January 1, 2001, the Act imposes limitations on post-election fundraising.

Government Code § 85316[1] provides:

> A contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

At its last meeting on June 7, 2001, this regulation came before the Commission for pre-notice discussion. In that context, the Commission considered two broad policy issues: (1) whether Section 85316 should be applied to elections that were held prior to January 1, 2001, and (2) whether candidates should be required to use funds raised post-election to retire debt from that election, or whether Section 85316 merely imposed a cap (equal to the amount of net debt) on post-election fundraising, without limiting the use of those funds to debt repayment.

On the first issue, the Commission decided that Section 85316 does not apply to elections held prior to January 1, 2001, and that Proposition 34's contribution limits, found in Sections 85301 and 85302, do not apply to contributions for pre-2001 elections. In Decision 1 in this memo the Commission will be asked to clarify whether its earlier decision applies to special election limits in effect prior to January 1, 2001. Decision 2 in this memo revisits whether candidates in post-January 1, 2001 elections are required to use funds raised after an election to pay outstanding debt from that election, as to which the Commission did not reach consensus at its June meeting.

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[1] All statutory references are to the Government Code, unless otherwise specified.

Decision 2, in particular, presents the problem of statutory construction. A brief review of governing principles may be useful at the outset.

"In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." *Estate of Griswold*, No. S087881, 2001 WL 694081, at *3 (Cal. Sup. Ct., June 21, 2001). However,

> "The motive or purpose of the drafters of a statute is not relevant to its construction absent reason to conclude that the body which adopted the statute was aware of that purpose and believed the language of the proposal would accomplish it. [Citations omitted.] The opinion of drafters or of legislators who sponsor an initiative is not relevant since such opinion does not represent the intent of the electorate and we cannot say with assurance that the voters were aware of the drafters' intent." [Citations omitted.]

Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission, 51 Cal. 3d 744, 764, fn. 10 (1990). In any event, "Legislative silence is an unreliable indicator of legislative intent in the absence of other indicia." *Ingersoll v. Palmer* 43 Cal. 3d 1321, 1350 (1987). The proper approach to construction of a statute is succinctly outlined as follows:

> "We begin by examining the statutory language, giving the words their usual and ordinary meaning. [Citations omitted.] If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.] If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation omitted.] In such cases, we select the construction that comports most closely with the apparent intent of the Legislature, with a view of promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." [Citations and internal quotation marks omitted.]

Estate of Griswold, *supra.*, *Id.*

In construing the meaning of Section 85316, the Commission's first task is therefore to examine the statutory language, giving the words their usual and ordinary sense, to determine whether the statute has a clear, unambiguous meaning. If the Commission decides that the statute has an unambiguous meaning, then "plain meaning" is applied and the interpretational task requires nothing further.

At the June meeting, the Commissioners did not agree on whether Section 85316 required that funds raised after the date of an election under that provision must be applied to debt

repayment. Some Commissioners observed that the statute nowhere specified *how* funds raised under Section 85316 must be spent, and argued that the Commission thus had no authority to "interpret" the statute to limit expenditures of such funds to debt repayment. These Commissioners urged that the "plain meaning" of Section 85316 limited the amount that could be raised, but placed no such limitation on expenditures.

The other Commissioners focused on the language limiting fundraising to amounts equal to a candidate's "net debt," arguing that there was no plausible explanation for limiting fundraising to the amount of "net debt" unless the point of the statute was precisely to allow for post-election debt repayment, and nothing more. These Commissioners also believed that the "plain meaning" of the language supported their position. They countered the argument that there were no words expressly limiting the use of these funds by pointing to an otherwise inexplicable choice of "net debt" as a fundraising limit.

It may well be that at the July meeting the Commission will decide that Section 85316 has a "plain meaning" interpretation determinable from its language without recourse to extrinsic evidence. If that should be the case, the Commission can adopt **option a or b** of Decision 2, as may be appropriate, without considering extrinsic evidence for or against either interpretation of the statute.

If, on the other hand, the Commission determines that the statute is "ambiguous" (that is, capable of more than one reasonable interpretation)[2], the Commission may turn for assistance in interpretation to "extrinsic sources including the ostensible objects to be achieved and the legislative history." (*Estate of Griswold, supra*, 2001 WL 694081, at *3.)

The remainder of this memorandum relating to Decision 2 is presented on the assumption that the Commission is unable to determine a "plain meaning" in Section 85316, and must resort to extrinsic evidence of its meaning. On this point, although Proposition 34 was a legislative initiative, the Legislature's intent in drafting Section 85316 is irrelevant since there is no indication that the voters had any idea of the drafters' intent. (*Taxpayers, supra*, 51 Cal.3d at 764, n. 10). When seeking to ascertain the voters' intent, the normal procedure is to review the voter information pamphlet that is distributed to all registered voters in the state. The Official Voter Information Guide for the November 2000 election (containing the official summary of Proposition 34, as well as the ballot arguments for and against the measure), make no reference to Section 85316, or to the issues with which the Commission is currently grappling.

Lacking an extrinsic source of legislative intent, the Commission would turn to the "ostensible objects to be achieved" by the Act. One of the uncodified sections of Proposition 34, Section 1(b)(2), states that the new measure is enacted to accomplish the following purpose:

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[2] "When the language of a statute is 'clear and unambiguous,' and thus not reasonably susceptible of more than one meaning, there is no need for construction and courts should not indulge in it." *People v. Camarillo*, 84 Cal.App. 4th, 1386, 1391 (2000).

"To minimize the potentially corrupting influence and appearance of corruption caused by large contributions by providing reasonable contribution and voluntary expenditure limits."

Discussion of Regulation

The structure of this proposed regulation has been altered considerably from the proposed regulation that was presented at last month's Commission meeting, based on the Commission's decisions and discussion at the last meeting. Like the language of proposed regulation 18531.6, discussion of the regulation in this memorandum is organized by decision points, with certain other elements highlighted as well.

The staff makes no recommendations on Decisions 1 & 2, but seeks to identify for the Commission the strengths and weaknesses of each option. Staff recommends **Option a** for Decision 3, consistent with staff's recommendation in the memorandum regarding the transfer regulation.

DECISION 1 – CONTRIBUTION LIMITS APPLICABLE TO ELECTIONS HELD BEFORE JANUARY 1, 2001.

Section 85316 is basically comprised of two essential elements: (1) a limitation, that contributions not exceed net debts outstanding, and (2) the requirement that any contribution accepted not exceed "the applicable contribution limit for that election." Having decided at its June 7, 2001 meeting that Section 85316 does not apply to elections held prior to January 1, 2001, the Commission also decided that the limitation on contributions to the amount of net debts did not apply to pre-January 1, 2001 elections.

Although the Commission has recently construed the "applicable contribution limit for that election," staff has received a large number of questions on this point, and it may be useful for the Commission to restate its position in the present context, to insure that the public and the regulated community fully understand the effect of the Commission's recent action. Hence, Decision 1, **options a** and **b**, concern interpretation of the phrase: "the applicable contribution limit for that election." The Commission will note that **option a** below appears inconsistent with the Commission's prior decision; consideration of this option today will, nonetheless, clarify the Commission's position.

In subdivision (a)(1), **option a**, a contribution limit that was applicable to an election held before January 1, 2001 would be applied to any present-day contributions made or accepted, as follows:

{Decision 1, option a}(1) The applicable contribution limits, if any, are the contribution limits in effect prior to January 1, 2001 for that election.

> Therefore, the contribution limits applicable to a candidate for elective state office in a special or special runoff election held prior to January 1, 2001 are $1,000 from a person, $2,500 from a political committee, and $5,000 from a political party.

Because the only contribution limits for state candidates in effect prior to the passage of Proposition 34 were the Proposition 73 limits on contributions to special elections and special runoff elections, this **option** actually affects only a small segment of the regulated community. The second paragraph of this option specifies what the contribution limits were for those elections under the existing Section 85305, for ease of reference.

The advantage to this option is that it clarifies the language of Section 85316: "and the contribution does not otherwise exceed the applicable contribution limit for that election." An argument can be made that this portion of the statute is meaningless if the limits in effect prior to January 1, 2001, are not imposed under this section. Had this phrase related only to post-January 1, 2001 elections, it could simply have referenced the sections of Proposition 34 containing the contribution limits, i.e. Sections 85301 and 85302. It would seem that a broader application was intended here, and to fail to impose the contribution limits applicable for each election would render this portion of Section 85316 meaningless.[3]

However, a longer-term view of Section 85316 presents another perspective on the potential meaning of the phrase. Under Section 83124, the contribution limits in Sections 85301 and 85302 (and the expenditure limits) are adjusted every other year to reflect any increase or decrease in the Consumer Price Index. So, in the year 2010, a candidate accepting a contribution for an election that was held in 2006 would very likely be accepting a different amount than the limit in effect in 2001, or even from the limit that would be in effect for the election in 2010. Thus, language in Section 85316, which clearly refers backward in time, need *not* refer back to a time before January 1, 2001.

The argument against **option a** is actually the argument in favor of **option b**. Under **option b**, there would be no limit imposed on the amount of a contribution that a candidate could accept for an election that took place prior to January 1, 2001.

> **{Decision 1, option b}**(1) There are no contribution limits in effect for elections held prior to January 1, 2001.

The attraction of **option b** is that it seems more in keeping with the Commission's prior decision that Section 85316 does not apply to elections held prior to January 1, 2001, than does

[3] Pending further Commission action, on May 11, 2001, the *Bauer Advice Letter*, No. A-01-044, was issued, in which staff advised State Senator Maurice Johannessen that contributions to retire outstanding debt remaining from his candidacy in a special election subject to Proposition 73 contribution limits should be raised under the Proposition 73 contribution limits. Therefore, if the Commission chooses not to select **option a,** the *Bauer Advice Letter* will be rescinded.

option a. That is, it could be argued that if Section 85316 does not apply to those elections at all, then it would be improper to apply the phrase "the contribution does not otherwise exceed the applicable contribution limit for that election" to impose the Proposition 73 contribution limits on pre-January 1, 2001 elections.

The contribution limits provisions of Proposition 73 were repealed by the contribution limits provisions of Proposition 208. Because Proposition 208 was enjoined at the time of the November 2000 election, Proposition 34 repealed the contribution limits provisions of both Propositions 73 and 208, giving us today's Sections 85301 and 85302. It has long been settled that "the effect of repealing a statute is 'to obliterate it as completely from the records . . . as if it had never passed, . . . except for the purpose of those actions which were commenced, prosecuted, and concluded whilst it was an existing law." *Moss v. Smith* 171 Cal. 777, 789 (1916). This supports **option b**, in that it suggests that the Proposition 73 limits no longer exist and, therefore, cannot be applied to the special and special runoff elections in pre-January 1, 2001 elections within the context of Section 85316.

There may be a downside to **option b**, when coupled with the Commission's prior determination that the limitation of post-election fundraising to the amount of net debts outstanding does not apply to pre-January 1, 2001 elections. Taken together, the two decisions would mean that officeholders with open committees for pre-2001 elections could essentially raise funds in unlimited amounts, with no limitation on the size of the contribution that can be accepted. This presents important concerns, particularly in light of the expressly stated purposes of Proposition 34:

> "SECTION 1. (b) The people enact the Campaign Contribution and Voluntary Expenditure Limits Without Taxpayer Financing Amendments to the Political Reform Act of 1974 to accomplish all of the following purposes:
> . . .
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> "(2) To minimize the potentially corrupting influence and appearance of corruption caused by large contributions by providing reasonable contribution and voluntary expenditure limits." (Official Voter Information Guide, Proposition 34: Text of Proposed Law, Section 1. (b)(2).)

The concern regarding officeholders' ability to raise unlimited funds in unlimited increments will largely be mitigated by the adoption of the transfer regulation that is also before the Commission at this meeting for emergency adoption, Regulation 18536. Under that regulation, except as provided by Section 85317[4], funds the candidate wishes to transfer to a

[4] Section 85317 permits funds raised in connection with one election for elective state office to be carried over without attribution to pay campaign expenditures incurred in connection with a subsequent election for the same elective office. This section is addressed more fully in the memorandum regarding the "one-bank-account" rule.

controlled committee for use in a future election will be subject to the contribution limits of Sections 85301 and 85302. Regulation 18536 is cross-referenced in Regulation 18531.6, at subsection (b)(2).

2001 AND SUBSEQUENT ELECTIONS

Subdivision (b)(1) presents a minor decision point for Commission action, one which is designed for clarification purposes only.

> (b) Government Code section 85316 applies to a candidate for elective state office in an election held on or after January 1, 2001, as follows:
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> (1) The contribution limits of Government Code sections 85301 and 85302 apply to any committee created on or after January 1, 2001, [whether the committee is established for an election held pre- or post-January 1, 2001].
>
> (2) Transfers to a committee formed for an election held on or after January 1, 2001 are subject to the requirements of 2 Cal. Code Regs. Section 18536.

Subdivision (b)(1) would prohibit a candidate from attempting to re-open a closed pre-January 1, 2001 committee[5] to take advantage of potentially unlimited fundraising opportunities afforded by the Commission's June 7, 2001 decision. For example, a committee that was opened for a 1996 election to the Assembly would not have been subject to any contribution limits at that time. If that committee was closed in November of 2000, the candidate could not "re-open" it to take advantage of the opportunity to raise funds without contribution limits and without regard to any fundraising limit, under the Commission's decision that Section 85316 does not apply to elections that were held prior to January 1, 2001. Subdivision (b)(1) would require that the candidate establish a new committee, which could be designated for the 1996 election, but which would subject to the contribution limits in effect for committees established post-January 1, 2001, thus avoiding this potential problem.

The effect of subdivision (b)(1) is the same, with or without the bracketed language. The bracketed language simply makes more explicit the fact that creating a new committee for a pre-January 1, 2001 election will not effect a revitalization of any right to unlimited fundraising.

Subdivision (b)(2) contains a cross-reference to Regulation 18536, to call the candidate's attention to the fact that he or she would be subject to the requirements of that regulation in the event of any transfer of funds for use in a future election.

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[5] Once a committee is closed, it cannot, technically, be "re-opened." A new committee, with a new identification number, would have to be created and designated for the old election.

DECISION 2 – USE OF POST-ELECTION FUNDS RAISED IN 2001 AND SUBSEQUENT ELECTIONS

Decision 2 will determine whether or not funds raised after an election must be used to pay debt. This issue was discussed by the Commission at the June meeting. As noted above, some Commissioners expressed a view that, because Section 85316 does not contain express language stating that contributions accepted after the date of an election must be used to pay for debt from that election, the Commission has no statutory ground for compelling candidates to do so. Other Commissioners felt that the statute's language clearly requires that post-election contributions be applied to pay outstanding debts from the election. Two options implement these competing views.

Decision 2, option a imposes a net-debt limit on post-election contributions, without requiring that they be applied to debt reduction:

> **{Decision 2, option a}**(c) A candidate for elective state office subject to subdivision (b) of this section may use contributions accepted pursuant to Government Code section 85316 for payment of net debts outstanding for an election and for expenditures permitted by Government Code sections 89510 to 89518.

Government Code sections 89510 to 89518 identify purposes considered to be political, legislative or governmental in nature, which are appropriate uses of campaign funds under the Act. Under **option a**, although the amount of post-election funds that could be raised would be limited to the amount of net debts outstanding, a candidate could use those funds for any purpose for which any other campaign funds could be used. This would allow a candidate the flexibility to use the post-election funds he or she raised to the candidate's best advantage, whether for payment of past debt, for use in current or future elections, or for officeholder expenses.

A candidate would not be violating the trust imposed on campaign funds[6], so long as election-related expenditures are reasonably related to a political purpose; officeholder expenditures are reasonably related to a legislative or governmental purpose; and expenditures which confer a substantial personal benefit are directly related to a political, legislative or governmental purpose.

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[6] Section 89510(b) provides: "All contributions deposited into the campaign account shall be deemed to be held in trust for purposes set forth in Chapter 5 (commencing with Section 85100)." Section 89512 states:

> "An expenditure to seek office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political purpose. An expenditure associated with holding office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a legislative or governmental purpose. Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose."

The principle argument in favor of **option a** is that Section 85316 is silent as to any specific use to which funds raised post-election must be put. There are simply no specific words expressly *requiring* that post-election funds be used to retire debt. The Commission may well conclude from this fact that the plain meaning of the language excludes any limitation on the use of funds raised under Section 85316. If the Commission finds ambiguity in the statute's silence, proponents of **option a** may point out that the Political Reform Act currently does not contain a restriction on how campaign funds must be used, so long as their use is reasonably related to a political purpose. Moreover, the drafters of Proposition 34 knew how to write a provision specifically directing how a candidate's funds must be expended, using this fact to show that the silence of Section 85316 is deliberate and meaningful. For example, Section 85304(a) provides:

> "A candidate for elective state office or an elected state officer may establish a separate account to defray attorney's fees and other related legal costs incurred for the candidate's or officer's legal defense if the candidate or officer is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. *These funds may be used only to defray those attorney fees and other related legal costs.*" (emphasis added.)

It may be fair to note, however, that Section 85304 is a unique, special purpose statute. The funds raised under Section 85304 are raised for a particular purpose expressly outside the scope of various provisions of the Act. Section 85304 may, in short, have little bearing on the interpretation of Section 85316.

Arguments against **option a** begin from the objection that the choice of "net debt" as a *fundraising* cap is difficult to explain in a statute that sanctions post-election fundraising for all purposes. It may also be argued that **option a** is contrary to one of the "ostensible objects" of the Act as expressed in Proposition 34's uncodified Section 1(b)(2) (quoted above at p. 4).[7] Permissible contributions under **option a** could be as large as a six figure debt, minimizing the Act's goal of reducing the potentially corrupting influence of large contributions.

It should be noted that the members of the regulated community voiced a strong preference for **option a**. As staff understands it, it was their position that Section 85316 was intended to prevent contributors from giving more than the maximum allowable contribution under Sections 85301 and 85302, rather than to regulate how a candidate spends his or her money, or whether or not the candidate pays his or her debts.

Option b presents two separate decision points. Under the primary decision point in the first sentence, candidates would be required to use funds raised after the date of an election to

[7] One could argue, however, that the net-debt fundraising cap is sufficient in itself to meet the Act's goal of providing "reasonable" contribution limits.

retire the debt from the election. However, **option b** also makes clear in the bracketed language that a candidate is not without recourse for obtaining financial assistance with officeholder expenses from third parties, pursuant to Section 82015(b)(2)(B).

> **{Decision 2, option b}**(c) A candidate for elective state office subject to subdivision (b) of this section may only use contributions accepted pursuant to Government Code section 85316 for payment of net debts outstanding for an election. [However, consistent with Government Code section 82015(b)(2)(B), a payment made at the behest of an officeholder that is principally for a legislative or governmental purpose is not a contribution. A payment made under Government Code section 82015(b)(2)(B) for an expense associated with holding office is deemed a payment that is principally for a legislative or governmental purpose.]

The effect of the bracketed language of **option b** is that it would cause a payment made for expenses associated with holding an office to be deemed to be made for a legislative or governmental purpose, thus fulfilling the criteria of Section 82015(b)(2)(B) and excluding the payment from the definition of "contribution" under Section 82015(b)(2).[8] Because the payment would not be a "contribution," it would not need to be deposited in the candidate's campaign account, and it would not cause the candidate to violate Section 85316.

There are several arguments in favor of **option b**. First, the "net debt" fundraising cap is best explained if the statute was designed to permit debt retirement with funds raised post-election. The choice of this "cap" is understandable when debt repayment is the object, but is difficult to rationalize when the permissible objects of post-election fundraising are any political, legislative, or governmental purpose. If the goal of the statute were simply to provide a cap on

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[8] Section 82015(b) provides:

> "(b)(2) A payment made at the behest of a candidate is a contribution to the candidate *unless* the criteria in either subparagraph (A) or (B) are satisfied:
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> " . . .
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> "(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:
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> " . . .
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> "(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution." (emphasis added.)

post-election fundraising, the argument goes, the expected cap would have been a fixed dollar amount for each office.

The other point in favor of **option b** is the argument from the overall goals of the Act, previously outlined as an argument *against* **option a**. Since **option a** would permit contributions far in excess of contribution limits (up to the amount of net debt, which could rise to six figures), **option b** would minimize "the potentially corrupting influence… caused by large contributions" cited at uncodified Section 1(b)(2) of Proposition 34 (quoted above at p. 4).

DEFINITION OF "NET DEBTS OUTSTANDING"

Section 85316 limits post-election contributions to the amount of "net debts outstanding." However, "net debts outstanding" is not defined in Proposition 34. Subdivision (d) would provide this definition:

> (d) For purposes of this section, "net debts outstanding" includes the following:
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> (1) An amount necessary to cover the cost of raising funds as permitted under this section;
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> (2) Any estimated costs associated with complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies, and
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> (3) The total amount of unpaid debts, loans and accrued expenditures incurred with respect to an election, less the sum of:
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> (A) The total cash on hand available to pay those debts and obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; tangible assets, including, but not limited to, computers, printers, copiers, and telephones valued at fair market value; and any other committee investments valued at fair market value; and
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> (B) The total amounts owed to the candidate or political committee in the form of credits, refunds of deposits, returns, or receivables, or a commercially reasonable amount based on the collectibility of those credits, refunds, returns, or receivables.
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> The amount of the net debts outstanding shall be reduced as additional funds are received. The candidate and his or her

> controlled committee(s) may accept contributions made after the date of an election if such contributions are designated in writing by the contributor for that election and if such contributions do not exceed the amount of net debts outstanding on the date the contribution is received. Any contribution that exceeds the amount of net debts outstanding shall be treated in the same manner as a contribution in excess of the contribution limits.

This definition is a modified version of the definition found in the Federal Elections Regulations at 11 C.F.R. § 110.1(b)(3)(ii). For purposes of Section 85316, staff has included within the meaning of "net debts outstanding" both fundraising costs and the administrative costs of complying with the reporting requirements of the Act, as well as the traditional definition of debt being obligations and liabilities incurred minus any identifiable assets. We have also specified that the amount of the net debts shall be reduced as funds are received, to ensure that the candidate's post-election "net debts outstanding" will be a diminishing figure that will eventually be zeroed out as incoming contributions reduce the balance to zero.

This definition closely mirrors the federal scheme, which also includes provisions for fundraising and compliance costs in its definition of net debts.

DECISION 3 – DELAYED APPLICABILITY TO CANDIDATES FOR STATEWIDE ELECTIVE OFFICE

Section 83 of Proposition 34, an uncodified provision, provides:

> "This act shall become operative on January 1, 2001. However, Chapter 5 (commencing with Section 85100) of Title 9 of the Government Code, except subdivision (a) of Section 85309 of the Government Code, shall apply to candidates of statewide elective office[9] beginning on and after November 6, 2002.

Because Government Code Section 85316 is contained within Chapter 5 of Title 9 of the Government Code, the effect of uncodified Section 83 is to make Section 85316 inapplicable to candidates for statewide elective office until November 6, 2002. Therefore, it is necessary that Section 83 of Proposition 34 be codified by regulation.

Decision 3, option a employs as its triggering mechanism the date of the election for which the committee was formed.

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[9] As amended by Proposition 34 "'[s]tatewide elective office' means the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, and member of State Board of Equalization." (Section 82053.) The limitations in effect as of January 1, 2001, therefore, apply generally to legislative offices.

> **{Decision 3, option a (date of election for which committee was formed determines application)}**(e) Notwithstanding subdivision (b), this regulation does not apply to a candidate for statewide elective office in an election held before November 6, 2002. This regulation applies on and after November 6, 2002, to a candidate for statewide elective office in an election held on or after November 6, 2002.

Selection of this option would provide consistency between the Commission's decision regarding the application of Section 85316 to pre-January 1, 2001 elections, in which the Commission selected the election as the triggering mechanism for application of the statute. This means that Regulation 18531.6, and by implication Section 85316, will apply to a candidate for statewide elective office in any election held on or after November 6, 2002.[10] However, this option maintains the effect, manifest by the language of Section 83, of delaying implementation of Proposition 34 for candidates for statewide elective office until November 6, 2002.

Option b employs as its triggering mechanism the date of the activity, rather than the date of the election.

> **{Decision 3, option b (date of activity determines application)}**(e) Notwithstanding subdivision (b), this regulation applies to a candidate for statewide elective office on and after November 6, 2002.

Staff recommends **option a**, which is consistent with staff's recommendation regarding the same issue as it relates to Decision 4, **option a** on the Transfer and Attribution regulation, proposed Regulation 18536. Staff recommends that the Commission conform its actions on the two matters. In both instances, **staff recommends option a.**

ONE MORE ISSUE

There is one remaining issue that may need to be addressed by the Commission regarding redesignation of campaign committees, whether or not they have debt. This issue is being presented to the Commission for guidance in a separate issue memo concerning the "one-bank-account" rule. Staff will review the guidance received in that context and will revisit Regulation 18531.6 and bring it before the Commission for amendment, if necessary, in light of the Commission's direction on the redesignation issue.

The following options would likely be presented for the Commission's consideration at that time:

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[10] The election in 2002 is scheduled for November 5.

{Decision 4}For purposes of subdivision (b) of this section, if a candidate for elective state office has net debts outstanding after an election and the candidate intends to run for re-election, the candidate **{option a}**must establish a new controlled committee for his or her next election**{option b}** may, subject to all other provisions of this title, redesignate the committee with outstanding debt for the new election.

{Decision 5}For purposes of subdivision (b) of this section, if a candidate has no debt outstanding after an election and the candidate intends to run for re-election, the candidate **{option a}** must establish a new controlled committee for his or her next election **{option b}** may, subject to all other provisions of this title, redesignate the committee with outstanding debt for the new election.

Consistent with the discussion on the interpretation of the single bank account rule staff memorandum (pages 9-12), Commission staff would recommend against allowing redesignation whether or not a candidate has net debts outstanding. (Decisions 4 and 5).